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JAMES H. McKENNEY,
Clerk.

MOTION TO DISMISS WRIT OF ERROR.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

Term Number 67.

THE AMERICAN EXPRESS CO. AND
R. M. COFFIN, PLAINTIFFS IN ERROR,

vs.

THE STATE OF IOWA, DEFENDANT IN ERROR.

ERROR TO THE SUPREME COURT OF IOWA.

(18,985.)

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

Term Number 67.

THE AMERICAN EXPRESS CO. AND
R. M. COFFIN, PLAINTIFFS IN ERROR,

vs.

THE STATE OF IOWA, DEFENDANT IN ERROR.

ERROR TO THE SUPREME COURT OF IOWA.

To MAXWELL & RAMSEY, and to WILLETT & HUBER, Attorneys for Plaintiffs in Error.

Sirs: You will each please take notice that the state of Iowa, defendant in error herein, will, upon the tenth day of October, 1904, or as soon thereafter as counsel can be heard, move the supreme court of the United States at its court room in the city of Washington, District of Columbia, to dismiss the writ of error to the supreme court of Iowa, heretofore and on or about the 29th day of May, 1903, sued out of the supreme court of the United States by the plain-

tiffs in error to the supreme court of the state of Iowa, and for such other and further relief as to the court may seem just.

You will further please take notice that said motion will be based upon the ground that the supreme court of the United States has no jurisdiction of this cause for the reason:

That this cause does not involve a federal question; that is to say, there has not been drawn into question in this cause the validity of any treaty or statute of, or any authority exercised under, the United States, the decision whereon has been against the validity thereof; nor has there been drawn into question in this cause the validity of any statute of, or any authority exercised under, any state on the ground that such statute is repugnant to the constitution, treaties or laws of the United States, the decision whereon has been in favor of the validity thereof; nor has any claim been made in this cause of or to any title, right, privilege or immunity under the constitution, or any treaty or statute of, or commission held, or authority exercised, under the United States, the decision whereon was against the title, right, privilege or immunity so set up or claimed.

You will also further please take notice that said motion will be made upon all the records, files and papers of said cause above entitled on file in the supreme court of the United States, which will be referred to in support thereof.

CHARLES W. MULLAN,
Attorney General of Iowa.
Attorney for Defendant in Error.

Service of the foregoing notice of motion to dismiss writ of error in the above entitled cause is hereby acknowledged this.....day of October, 1904.

.....

Attorneys for Plaintiffs in Error.

MOTION TO DISMISS WRIT OF ERROR.

The American Express Company and R. M. Coffin,
Plaintiffs in Error.

v.

The State of Iowa,
Defendant in Error.

Comes now the state of Iowa, defendant in error herein, by Charles W. Mullan, its attorney general, and moves the court to dismiss the writ of error issued herein on or about the 29th day of May, 1903, and to grant such other and further relief as to the court may seem just herein, and as grounds of said motion respectfully shows to this court:

That this cause does not involve a federal question; that is to say, there has not been drawn into question in this cause the validity of any treaty or statute of, or any authority exercised under, the United States, decision whereon has been against the validity thereof; nor has there been drawn into question in this cause the validity or any statute of, or any authority exercised under, any state on the ground that such statute is repugnant to the constitution, treaties or laws of the United States, the decision whereon has been in favor of the validity thereof; nor has any claim been made in this cause of or to any title, right, privilege or immunity under the constitution, or any treaty or statute of, or commission held, or authority exercised under, the United States, the decision whereon was against the title, right, privilege or immunity so set up or claimed.

STATEMENT OF THE CASE.

To enable the court to determine the motion to dismiss the writ of error herein, a concise statement of the facts in the case will be set forth:

Certain packages of intoxicating liquors, each containing one quart, were, in pursuance of orders received by John Collum & Company, dealers in intoxicating liquors at Rock Island, Illinois, delivered to the American Express Company, plaintiff in error, at Rock Island, to be transported by that company to the city of Tama, in the state of Iowa, and there to be delivered to the consignees named, upon the payment of $3 and express charges on each package so shipped.

The plaintiff in error had no knowledge that such packages contained intoxicating liquors, and transported them to Tama in the state of Iowa, where they were seized in the possession of its agent, R. M. Coffin, plaintiff in error. The liquors so seized were, by the judgment of a justice of the peace, condemned to be destroyed on the ground that they were kept by plaintiffs in error to be sold in violation of the law of the state of Iowa.

Upon appeal to the district court of Iowa by the plaintiffs in error, the liquors were ordered to be returned to the express company, upon the ground that such liquors were wrongfully seized, and from the judgment of the district court the state appealed to the supreme court of Iowa.

At the October term, 1902, the supreme court of Iowa reversed the judgment of the district court, and held that the liquors in question had been rightfully seized.

The following is an agreed statement of facts stipulated by the attorneys appearing for the respective parties in the district court:

"It is hereby stipulated by the parties to the above entitled cause:

1st. That the defendant, the American Express Company, is a foreign corporation as alleged in defendants' answer.

2d. That said defendant express company has not nor has it at any time had or held a permit or other authority to sell intoxicating liquors in Tama county, Iowa.

3d. That the defendant, R. M. Coffin, is a registered pharmacist and holds a permit to sell intoxicating liquors for the purposes authorized by the laws of Iowa, but that he makes no claim that such permit authorizes any delivery of intoxicating liquors by him as agent of said express company which may be received by him as the agent of his company, and consigned to parties who may call for the same at the office of said company, nor is the delivery of such liquors by him for the said express company in any wise conducted under the regulations and laws prescribed by the state of Iowa for the sale of intoxicating liquors by him as a registered pharmacist and permit holder.

4th. That at the time the packages described in defendants' answer, which are the same packages seized under the warrant of seizure in this cause, were received for transportation by said express company, neither the defendant company nor its agents or employes knew or had any knowledge

that the said packages contained intoxicating liquors, nor did said express company, its employes or either of the other defendants, Coffin and Crossman, know or have any knowledge of the actual contents of said packages seized herein until after the seizure thereof.

5th. It is conceded that said packages and each of them do contain intoxicating liquors of not less than one quart each, and that such liquors are in the original packages in which they were delivered to the defendant express company as a common carrier in the state of Illinois for transportation to Tama, Iowa.

6th. That the charge of three dollars on each package, mentioned in defendants' answer, is no part of the charges for transportation and no part of the compensation of said defendant express company for transporting the same, and that the said sum of three dollars is the purchase price of the goods contained in each package respectively, and that said express company is bound under its contract to collect for the shipper of said packages the said sum of three dollars on each package before delivering the same to the consignee and to transmit to said shipper the sum of three dollars on each package.

7th. That the place of delivery of said packages to consignees is at the office of the said American Express Company in Tama, Tama county, Iowa, of which office the defendant, R. M. Coffin, is in charge as agent, and at the time of the seizure herein none of said packages had been delivered to the consignees or either of them. That said packages and each of them were shipped by consignors to consignees on their orders, given to the traveling agent of

consignors at Tama, Iowa, and by him sent in to consignors subject to their approval and shipment thereunder.

8th. That in case the hearing of this cause should be on demurrer of plaintiff to defendant's answer, each of the above admitted facts shall be considered in connection with the answer as fully and have the same effect in law as if alleged in said answer or made a part thereof.

C. B. BRADSHAW,
Attorney for Plaintiffs.

WILLETT & HUBER,
Attorneys for Defendant.

BRIEF UPON MOTION TO DISMISS WRIT OF ERROR.

Section 709 of the revised statutes of the United States provides:

"A final judgment or decree in any suit in the highest court of a state, in which a decision in the suit could be had, where is drawn in question the validity of a treaty, or statute of, or an authority exercised under, the United States, and the decision is against their validity; or where is drawn in question the validity of a statute of, or an authority exercised under any state, on the ground of their being repugnant to the constitution, treaties, or laws of the United States, and the decision is in favor of their validity; or where any title, right, privilege, or immunity is claimed under the constitution, or any treaty or statute of, or commission held or authority exercised under, the United States, and the decision is against the title, right, privilege, or immunity specially set up or claimed, by either party, under such constitution, treaty, statute, commission, or authority, may be re-examined and reversed or affirmed in the supreme court upon a writ of error. The writ shall have the same effect as if the judgment or decree complained of had been rendered or passed in a court of the United States; (and the proceeding upon the reversal shall be the same, except that the supreme court may, at their discretion, proceed to a final decision of the case, and award execution, or remand the same to the court from which it was so removed).

"The supreme court may (reaffirm) reverse, modify, or affirm the judgment or decree of such state court, and may, at their discretion, award execution, or remand the same to the court from which it was removed by the writ."

The claim made by the plaintiffs in error is that the supreme court of Iowa erred in not holding that sections 2413, 2414, 2415 and 2416 of the code of Iowa, and the seizure of the packages containing intoxicating liquors, and the proceedings against the same under the sections of the code referred to, were repugnant to section 8 of article 1 of the constitution of the United States, and that by reason of the holding on the part of the supreme court of Iowa, a federal question is involved which gives this court jurisdiction to hear and determine this cause; and the soundness or unsoundness of the claim made by plaintiffs in error determines the jurisdiction of this court.

The question here presented is: Does the decision of the supreme court of Iowa deny the authority of congress to regulate commerce among the several states?

The contention of the defendant in error is that the decision of the Iowa court is not in contravention of the authority of congress to regulate interstate commerce, and on the contrary is a decision wherein the state simply exercises its police powers in regulating the traffic and sale of intoxicating liquors within the state. The regulation of the sale and use of intoxicating liquors has always been recognized as a subject peculiarly appertaining to the police powers of the several states:

License Cases, 5 How., 504;
Bartemeyer v. Iowa, 18 Wall., 129;
Beer Co. v. Massachusetts, 97 U. S., 25;
Foster v. Kansas, 112 U. S., 201;
Mugler v. Kansas, 123 U. S., 623;
Kidd v. Pearson, 128 U. S., 1;
Eilenbecker v. Plymouth County, 134 U. S., 31.

On the 8th day of August, 1890, congress enacted a law which provided:

"All fermented, distilled or other intoxicating liquors or liquid, transported into any state or territory, or remaining therein for use, consumption, sale or storage therein, shall, upon arrival in such state or territory, be subject to the operation and effect of the laws of such state or territory enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such state or territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise."

In construing the provisions of this act of congress, this court, in *Rhodes v. Iowa*, 170 U. S., 412, held that packages of intoxicating liquors shipped from another state into the state of Iowa did not become subject to the police power and the statutes of Iowa until such packages reached their final destination in that state.

Soon after the passage of this act of congress, the question of its constitutionality and effect was before this court in Rahrer's Case, 140 U. S., 545, and it was unanimously held that intoxicating liquors which had been sent before the passage of the act from the state of Missouri to the state of Kansas to be sold in the latter state were subject to the police power of the state of Kansas and to the statutes of that state. In determining the question Mr. Chief Justice Fuller, in delivering the opinion of the court, said:

"Congress did not use terms of permission to the state to act, but simply removed an impediment to the enforcement of the state laws in respect to imported packages in their original condition, created by the absence of a specific utter-

ance on its part. It imparted no power to the state not then possessed, but allowed imported property to fall at once upon arrival within the local jurisdiction. * * * This is not the case of a law enacted in the unauthorized exercise of a power exclusively confided to congress, but of a law which it was competent for the state to pass, but which could not operate upon articles occupying a certain situation until the passage of the act of congress. That act in terms removed the obstacle, and we perceive no adequate ground for adjudging that a re-enactment of the state law was required before it could have the effect upon imported which it had always had upon domestic property. Jurisdiction attached, not in virtue of the law of congress, but because the effect of the latter was to place the property where jurisdiction could attach."

In the case at bar the property was transported from Rock Island in the state of Illinois to its final destination in the city of Tama, state of Iowa, where it was then held by the plaintiffs in error and was, under the authority cited, subject to the police power of the state to the same extent as domestic property therein. It was not property in transit from one state to another, nor was it being carried through any part of the state of Iowa to reach the destination to which it had been consigned. When it was delivered at the place of its destination by the common carrier, its condition as property subject to the laws of congress regulating interstate commerce ceased, and it at once came within the jurisdiction of the laws of the state of Iowa.

The question whether it was held by plaintiffs in error for the purpose of being sold in violation of the laws of the state must be determined under the law of the state having jurisdiction of the property, and by the courts of that state.

The owners or persons in charge of the property voluntarily shipped the same from the state of Illinois into the state of Iowa when they knew that the moment it arrived at its destination in the latter state it would be subject to the police power and to the laws of that state; and that the question as to whether it was unlawfully kept for sale must be determined by the courts of the state having jurisdiction of the property.

The question whether the sale of the liquors in question was made in the state of Illinois or in the state of Iowa, and whether the express company acted as the agent of the consignor in making such sale and delivery, are questions wholly within the jurisdiction of the courts of Iowa, and in no wise relate to or contravene the authority of congress to regulate commerce among the several states.

It is therefore most respectfully submitted that the motion filed to dismiss the writ of error herein should be sustained by this court for the reason that no federal question is involved which gives to this court jurisdiction to hear and determine this cause.

CHARLES W. MULLAN,

Attorney General of Iowa,

Attorney for Defendant in Error.